

661—5.7(17A,101A) Explosive materials. Those wishing to receive an explosive materials commercial license may obtain a copy of the required application by contacting the fire marshal's office, sheriff's office or the office of the chief of police in cities of over 10,000 people.

5.7(1) Such application is submitted to the sheriff's office or office of the chief of police. That agency reviews the application, investigates the applicant, inspects the buildings, if necessary, and completes the application, then forwards it to the fire marshal.

a. If the application is approved, the fire marshal enters approval thereon, notifies the local agency, and issues the license.

b. Explosive materials commercial license expires on December 31 of each year and may be renewed.

c. If an application is denied, the applicant may appeal under 661—Chapter 10.

5.7(2) A person wishing to purchase, possess, transport, store or detonate explosive materials shall obtain a permit to do so from the county sheriff or the chief of police.

5.7(3) When a sheriff confiscates explosive materials, the sheriff shall give notice to the state fire marshal's office as soon as reasonably possible.

661—5.8(100,101,101A) Fire drills. All public and private school officials and teachers shall conduct fire drills in all school buildings as specified in Iowa Code section 100.31 when school is in session. All doors and exits of their respective rooms and buildings shall remain unlocked during school hours or when such areas are being used by the public at other times.

661—5.9(17A,100) Fire escapes. Upon receipt of a written communication from an owner appealing the action or requirement of any fire escape inspector that sets forth such action or requirement and the objections the owner has to the action or requirement of such inspector, the provisions of 661—Chapter 10 will apply.

661—5.10(17A,22,100,692) Public inspection of fire marshal files and fire records. The fire marshal's office keeps a record on file of every reported fire in Iowa. All other important written information gathered by the fire marshal also is filed. Most of the contents of these documents are available to the public. Some of the information contained in these files, such as intelligence data or criminal history data, as defined in Iowa Code chapter 692, is not a public record. Requests for information should be addressed to the State Fire Marshal, Wallace State Office Building, Des Moines, Iowa 50319.

5.10(1) A person may obtain a copy of a public record by either visiting the fire marshal's office or submitting a request in writing. Before visiting this office to examine these records, one should contact the office first to determine if personnel will be available to assist them. Such examination may take place during reasonable business hours and public records may be copied.

5.10(2) If a person wishes a copy of the record of a particular fire, it may be copied in the fire marshal's office or that person may so request by writing to the fire marshal's office setting forth the date, time and address, including county, of the fire. The fire marshal will forward a copy of the public record and may request reimbursement for the actual cost of copying and mailing the information.

661—5.11(17A,80,100) Information requested before inspection. Persons requesting the inspection of a building that is alleged to require repair, removal or demolition under Iowa Code section 100.13 shall provide the following information, if known: the address of the building; the name and address of the building's owner; the requester's name, address and telephone number; and a general description of the alleged deficiencies which the requester seeks remedied.

5.11(1) *Initial determination.* The fire marshal, upon receipt of the information, shall make an initial determination whether there are sufficient allegations to warrant an inspection.

a. If, in the fire marshal's opinion, the complaint fails to warrant conducting an inspection, the fire marshal shall then so advise the complainant.

b. If the fire marshal determines that an inspection is warranted, the fire marshal will so advise the county attorney, the requester and person(s) identified as the owner(s).

5.11(2) *Cause to be inspected.* The fire marshal shall then cause the inspection of the building to determine if:

a. By want of proper repair, or by reason of age and dilapidated condition, it is especially liable to fire and is so situated as to endanger other buildings, property or persons, or

b. It contains combustibles, explosives or flammable materials dangerous to the safety of any buildings, premises or persons.

5.11(3) *Final decision.* Upon completion of the inspection the fire marshal shall then decide if the building needs to be removed or repaired.

a. If the building complies with applicable laws or rules and no deficiencies are found, the fire marshal shall accordingly notify the county attorney, the owner and the requester.

b. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then notify the mayor and clerk of said city of the deficiencies and the need for repairs or removal.

c. If any deficiencies are found, and the building is within the corporate limits of a city, the fire marshal shall then identify specifically such deficiencies and prepare an order to correct or repair the deficiencies or remove or demolish the building. Such notice and order should be sent to the county attorney with a request that the notice and order be examined by the county attorney.

5.11(4) *Verification of legal description.* The county attorney shall, upon receipt of the fire marshal's notice and order, verify the legal description and identification of the property owner and shall advise the fire marshal how to properly serve the order.

5.11(5) *Contents of order.* This order shall notify the owner of the building that the order becomes effective upon its receipt or issuance. The order shall also notify the owner that, within five days after the order's effective date, the owner may file a petition for review of the order in accordance with Iowa Code section 100.14.

5.11(6) *Who shall be served.* If the county attorney deems it appropriate, any occupants, lienholders or lessees shall be served with a copy of the order.

5.11(7) *Reasonable time to comply.* The order shall give the owner a reasonable time to comply with its mandate(s). The fire marshal shall determine what constitutes a reasonable time by considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish the building and other reasonable, relevant information.

5.11(8) *Reinspection.* If the owner of the building elects not to challenge the fire marshal's order, the fire marshal shall then, at the end of the period during which compliance was required, conduct another inspection of the building.

a. If the fire marshal finds that the order has been complied with, the fire marshal shall notify the county attorney, owner and requester of this fact.

b. If the fire marshal finds that the order has not been complied with, the fire marshal will notify the county attorney of noncompliance.

5.11(9) *Failure to comply.* Upon receipt from the fire marshal of the owner's failure to comply, the county attorney shall:

- a. Institute the procedure necessary to subject the owner to a penalty of \$10 for each day the owner fails to comply, and
- b. Confirm the legal description of the property, the owner's name and address, the alleged deficiencies of the building, that an inspection was conducted, that some deficiency was found, that the owner was properly served, notified and given an adequate opportunity to repair the deficiency, and that the deficiency has not been remedied and may, therefore, advise the fire marshal that the destruction is appropriate at this time.

5.11(10) *Final action taken.* The fire marshal, upon the advice of the county attorney, may repair, remove or destroy the building. Such destruction may occur by:

- a. Permitting the local fire service to burn the building as a training exercise;
- b. Asking for public bids on the building;
- c. If significant costs are anticipated, the fire marshal may request funds from the Iowa executive council.

661—5.12(17A,80,100A) *Sharing of insurance company information with the fire marshal.* Insurance companies shall provide the specified information to the fire marshal as follows:

5.12(1) Whenever an insurance company has reason to believe that a fire loss insured by the company was caused by something other than an accident, said insurance company shall provide to the fire marshal, or some other agency authorized to receive such information under Iowa Code chapter 100A, all information and material possessed by said company relevant to an investigation of the fire loss or a prosecution for arson.

5.12(2) Whenever the fire marshal, or an agent or employee of the fire marshal, requests in writing that an insurance company provide information in its possession regarding a fire to the fire marshal, the insurance company shall provide all relevant information requested. Relevant information may include, but need not be limited to:

- a. Insurance policy information relating to a fire loss under investigation including information on the policy application.
- b. Policy premium payment records.
- c. History of previous claims made by the insured.
- d. Material relating to the investigation of the loss, including the statement of any person, proof of loss, and other information relevant to the investigation.

5.12(3) Unless otherwise expressly limited any request for information under this rule shall be construed to be a request for all information in the possession of an insurance company. Any information in the custody or control of any agent, employee, investigator, attorney or other person engaged by an insurance company, on a permanent or temporary basis, in the person's professional relationship to the insurance company shall be considered to be in the possession of the insurance company subject to this rule.

661—5.13(17A,80,100A) *Release of information to an insurance company.* An insurance company which has provided fire loss information to an authorized agency pursuant to Iowa Code section 100A.2 may request information relevant to said fire loss investigation from the fire marshal. If the insurance company has provided information to an authorized agency other than the fire marshal, the request shall include proof that information was provided. For purposes of this rule the term insurance company shall include an attorney, adjustor or investigator engaged by the company in reference to the particular fire loss involved in the request even though the attorney, adjustor or investigator is not a full-time employee of the insurance company. The attorney, adjustor or investigator shall provide the fire marshal with proof of authorization from the insurance company to act as its representative relative to the loss.

661—5.14(17A,80,100A) Forms. These rules require the use of the following forms that are available from the commissioner or the state fire marshal.

5.14(1) When an insurance company has reason to believe that a fire loss has occurred, the company shall notify the fire marshal on the form entitled “Insurance Form Number One.”

5.14(2) Requests for information by the fire marshal, the fire marshal’s agents or employees from an insurance company pursuant to Iowa Code section 100A.2 shall comply with the form entitled “Insurance Form Number Two.”

5.14(3) Material requested on Insurance Forms Number One and Two shall carry a cover form which complies with “Insurance Form Number Three.”

5.14(4) Request for information by an insurance company from the fire marshal shall comply with “Insurance Form Number Four.”

661—5.15(17A,100) Waivers, variances, and exceptions. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules of the state fire marshal in situations where no other more specific procedure provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

“*Rules of the state fire marshal*” include any rules contained in 661—Chapters 5, 51, 53, 54, 55, and 59.

“*Waiver*” or “*variance*” means an action by the fire marshal which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

5.15(1) Applicability of rule. The fire marshal may grant a waiver from a rule only if the fire marshal has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The fire marshal may not waive requirements created or duties imposed by statute.

5.15(2) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the fire marshal may, in the fire marshal’s sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the fire marshal finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5.15(3) Filing of petition. A petition for a waiver must be submitted in writing to the fire marshal as follows:

a. License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

b. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. Other. If the petition does not relate to a license application or a pending contested case, the petition shall be submitted using a caption indicating the name of the entity or person for whom the waiver is requested and the location of property to which the proposed waiver would apply, if any.

d. File petition. A petition is deemed filed when it is received in the office of the state fire marshal. A petition should be sent or delivered to the Iowa State Fire Marshal, 621 East 2nd Street, Des Moines, Iowa 50309.

5.15(4) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

- a. The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.
- b. A description of and citation to the specific rule from which a waiver is requested.
- c. The specific waiver requested, including the precise scope and duration.
- d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 5.15(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.
- e. A history of any prior contacts between the department of public safety or any other agency of the state of Iowa or political subdivision and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license or certificate held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the last five years.
- f. Any information known to the requester regarding actions of the fire marshal in similar cases.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
- h. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

5.15(5) Additional information. Prior to issuing an order granting or denying a waiver, the fire marshal may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the fire marshal may, on the fire marshal's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the fire marshal related to the waiver request.

5.15(6) Notice. The fire marshal shall acknowledge a petition upon receipt. The fire marshal shall ensure that, within 30 days of receipt of the petition, notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, including the petitioner. In addition, the fire marshal may give notice to other persons. To accomplish this notice provision, the fire marshal may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

5.15(7) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

5.15(8) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. *Fire marshal discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the fire marshal, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the fire marshal based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the fire marshal should exercise discretion to grant a waiver of a rule.

c. Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

d. Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the fire marshal shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

e. Conditions. The fire marshal may place on a waiver any condition that the fire marshal finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the fire marshal, a waiver may be renewed if the fire marshal finds that grounds for a waiver continue to exist.

g. Time for ruling. The fire marshal shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the fire marshal shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

h. When deemed denied. Failure of the fire marshal to grant or deny a petition within the required time period shall be deemed a denial of that petition by the fire marshal. However, the fire marshal shall remain responsible for issuing an order denying a waiver.

i. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

5.15(9) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the fire marshal is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

5.15(10) Summary reports. The fire marshal shall provide information regarding requests for waivers received pursuant to this rule to the agency rules administrator for inclusion in summary reports of requests for waivers as provided for in 661—subrule 10.222(10).

5.15(11) Cancellation of a waiver. A waiver issued by the fire marshal pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the fire marshal issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

5.15(12) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

5.15(13) Defense. After the fire marshal issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

5.15(14) Appeals. Decisions of the fire marshal pursuant to this rule may be appealed to the commissioner of public safety. Provision for appeals of proposed decisions in contested case proceedings shall apply, as provided in rule 661—10.327(17A).

5.15(15) Judicial review. Judicial review of the department’s decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

5.15(16) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE IOWA DEPARTMENT OF PUBLIC SAFETY,
STATE FIRE MARSHAL DIVISION

Petition by (name of petitioner) for the
waiver/variance of (insert rule citation)
relating to (insert the subject matter).

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PETITION FOR
WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.
 2. Describe and cite the specific rule from which a waiver is requested.
 3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.
 4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in the answer all of the following:
 - Why applying the rule would result in undue hardship to the petitioner;
 - Why waiving the rule would not prejudice the substantial legal rights of any person;
 - Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
 - How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.
 5. Provide a history of any prior contacts between the department, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.
 6. Provide information known to the petitioner regarding the fire marshal’s action in similar cases.
 7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.
 8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver.
 9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
 10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the fire marshal with information relevant to the waiver.
- I hereby attest to the accuracy and truthfulness of the above information.

Petitioner’s signature

Date

This rule is intended to implement Iowa Code section 17A.22.

661—5.16 to 5.39 Reserved.

661—5.40(17A,80,100) Portable fire extinguishers—generally. The standard for “Portable Fire Extinguishers,” No. 10, 1988 edition of the National Fire Protection Association, together with its reference to other specific standards referred to and contained within the volumes of the National Fire Code, 1988 edition of the National Fire Protection Association published in 1988, shall be the rule governing portable fire extinguishers in the state of Iowa.

5.40(1) Portable halogenated fire extinguishers. Approved portable halogenated fire extinguishers may be permitted for use in electrical, telephone, or computer equipment areas in public buildings referred to in Iowa Code section 100.35.

5.40(2) Reserved.

661—5.41(17A,80,100) Halon fire extinguishing systems—generally. The standards on “Halon 1301 Fire Extinguishing Systems,” No. 12A, 1987 edition of the National Fire Protection Association, and “Halon 1211 Fire Extinguishing Systems,” No. 12B, 1985 edition of the National Fire Protection Association together with its reference to other specific standards referred to and contained within the volumes of the National Fire Code, 1988 edition of the National Fire Protection Association, published in 1988, shall be the rules governing Halon fire extinguishing systems in the state of Iowa.

661—5.42(100) Cellulose insulation. This rule shall apply to all cellulose insulation loose-fill or spray applied which is used, sold or offered for sale in Iowa after December 8, 1988.

Cellulose insulation shall consist of virgin or recycled wood-based cellulosic fiber and may be made from related paper or paperboard stock, excluding contaminated materials and extraneous foreign materials such as metals and glass which may reasonably be expected to be retained in the finished product. Suitable chemicals may be introduced to improve flame resistance processing and handling characteristics. The particles shall not be so fine as to create a dust hazard, and the added chemicals shall not create a health hazard. The materials used must be capable of proper adhesion to the additive chemicals.

5.42(1) Cellulose insulation shall comply with the requirements of the Consumer Product Safety Commission, Interim Safety Standard for Cellulose Insulation, 16 CFR Part 1209 (1-1-87 edition).